

Serial No: 09/439,427
Attorney Docket No: 0491 PUS

REMARKS

Claims 22, 24-28, 30-33, 36 and 38

Claims 22, 24-28, 30-33, 36 and 38 are rejected as anticipated by Wyler (US 5,868,080). These claims include product-by-process limitations. If the product made by the claimed process is different from the prior art product, the claim is not anticipated. (Board of Appeals Decision, footnote 1.) Therefore, the question here is whether Wyler's disclosure of "an integral anti-skid surface 36, formed e.g. by knurling or roughening..." (column 4, lines 17-18) is different from a claimed product resulting from the process of "mechanically scuffing," "scuffing" or "'brushing...with at least one wire brush."

As shown by the Declaration of William P. Apps, the claimed "scuffed" surface is distinguishable from the Wyler surface. The Wyler surface would have a bumpy, shiny surface, while the claimed scuffed surface would have a smooth, yet dull surface with visible scuff marks. Since the product produced by the claimed surface is different from the Wyler product, Wyler does not anticipate these claims. The Declaration is sufficient because it shows that the product made by the product-by-process step (scuffing) would be distinguishable on examination from the Wyler prior art pallet.

Additionally, claim 22 has been amended to recite that the surfaces have scuffs thereon. The surfaces of Wyler do not include scuffs. Therefore, for this additional reason, claim 22 is patentable.

Claims 39-51

Claims 39-51 have been rejected as obvious over Wyler in view of Anderson (US RE29,192. The Examiner admits that Wyler does not disclose a pallet having a deck member having a first major surface of a single material, the first major surface is mechanically scuffed to define a slip-resistant surface thereon. The Examiner argues that it would have been obvious to modify the structure of Wyler in view of Anderson to include such structures of a single material.

However, if the pallet of Wyler were modified to include only a single material, it would also be modified to *eliminate* the reinforcing bars. The Wyler reference would therefore not have any "roughened or knurled surfaces," upon which the Examiner relies for the rejection. Wyler cannot be modified to be made of a single material without also

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eliminating the "roughened or knurled surfaces." For this reason, claims 39-51 are patentable.

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Respectfully submitted,

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